

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMUNITY FINANCIAL SERVICES
ASSOCIATION OF AMERICA, LTD., et al.,

Plaintiffs,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION, et al.,

Defendants.

Civil Action No. 14-953-GK

SECOND DECLARATION OF DENNIS SHAUL

Pursuant to 28 U.S.C. § 1746 and LCvR 11.2, I hereby declare as follows:

1. I am the chief executive officer for the Community Financial Services Association of America (“CFSA”). I became CFSA’s CEO in October 2012. Before joining CFSA, I worked for more than ten years on Capitol Hill, where I served as senior advisor to Rep. Barney Frank (D-MA) on the House Financial Services Committee. I worked extensively on the Dodd-Frank Bill and on the development of practices regarding anti-money laundering. I was intimately involved in the drafting of the Dodd-Frank Bill as a whole, but specialized on matters relating to The Volcker Rule, “Too Big To Fail”, and other issues relating to the size and influence of the banking industry.

2. I served as chief financial regulator in the state of Ohio under Governor John J. Gilligan. In this role, I implemented the state’s first consumer protection law and revisions to the state security statute. I have a J.D. from Harvard Law School and a Master’s degree in

Economics from Oxford University. I am a graduate of the University of Notre Dame and was a Rhodes Scholar.

3. Over the past three years, as CEO of CFSA, I have watched as an ever-growing number of CFSA members have been informed by their banks that they are no longer welcome as customers, that their accounts are to be closed, and that long-standing relationships are to be ended. It is now an open secret in both the payday lending and banking industries that federal regulators have been pressuring the banks to shut down our industry *in toto*.

4. Federal regulators have pressured banks to aid them in their campaign to attack our industry. This tactic is particularly effective in the case of our industry because payday lenders must rely on banking services to do business. A prospective borrower who applies for a short-term, small-dollar loan typically provides a post-dated check or electronic debit authorization for the value of the loan, plus a fee. The lender advances the customer the amount of the loan. After the term of the loan, which is usually coterminous with the borrower's next payday, the borrower typically returns to the storefront and repays the loan and the fee. In addition to meeting payroll and issuing checks to pay the bills, a payday lender needs access to banking services for cash management purposes, i.e., to deposit the cash and checks received in the course of its business. Sometimes, moreover, a borrower will not return to the storefront location. In this situation, the lender instead deposits the post-dated check or executes the debit authorization. In order to have and make good on the security for the loan, therefore, the lender must have a deposit account with a bank and be able to access the Automated Clearing House (ACH) network. Both services require a relationship with a bank.

5. As I described in my first declaration, the effort being undertaken by federal regulators to cut off CFSA members from the banking system has had grave consequences for

CFSA Members and our industry. In the two years that have since intervened, the situation has only grown worse. Our members are careful not to reveal their existing banking relationships lest federal regulators then single out those banks for heightened supervision, harassment, and threats in order to choke off these last sources of financial services.

6. Banks continue to capitulate to their regulators and to terminate both CFSA members and other lenders offering short-term, small-dollar loans. Recent terminations include:

a. On November 4, 2015, Hancock Bank terminated a CFSA Member in Mississippi.

b. On November 18, 2015, First Tennessee terminated a CFSA Member in Tennessee.

c. On March 8, 2016, Wells Fargo terminated a CFSA member in Idaho.

d. On April 28, 2016, TD Bank terminated a CFSA member in New Hampshire.

e. On February 10, 2016, U.S. Bank terminated a CFSA member in Missouri. The bank also closed the personal checking accounts of the employees and former employees of this CFSA member. The bank provided this CFSA member with only two-weeks notice.

f. On November 21, 2016, Business Bank of Texas notified Power Finance Texas Companies, a Texas-based CFSA member, that the OCC would not permit the bank to provide banking services to Power Finance because it is a payday lender. As a result, Power Finance will be required to close its bank accounts and completely sever its relationship with Business Bank of Texas by the end of the year. Earlier in the year, Business Bank of Texas had terminated Power Finance's ACH processing services but not its ability to hold a bank account.

g. On November 2, 2016, the day after it had terminated its relationship with Advance America, U.S. Bank announced that it would be terminating its relationship with another CFSA member, NCP Finance Ohio, LLP. Just six weeks earlier, U.S. Bank had been attempting to interest NCP in additional services.

h. On November 10, 2016, U.S. Bank announced that it would be terminating its approximately 20-year relationship with a CFSA Board member. U.S. Bank had been providing banking services to 214 branch locations for this lender in addition to providing other organization-wide treasury services. For those locations where alternatives cannot be found, the branch location may close.

i. On November 22, 2016, I learned from one of the largest companies in our industry, that it had also recently been terminated by U.S. Bank. This termination resulted in the loss of banking services at a large number of the company's locations.

j. In the past month, Advance America, Inc., a CFSA member and our co-Plaintiff in this suit, has experienced five terminations: FirstMerit Bank on October 21, 2016; Your Community Bank on October 31, 2016; U.S. Bank on November 1, 2016; BBVA Compass Bank on November 7, 2016; and MainSource Bank on November 21, 2016.

7. The consequences for our industry have been dire. Numerous payday lenders have had to exit the industry after having been denied the ability to keep even a simple bank account open, much less access the ACH system that they need to carry out their day-to-day business operations. To date, CFSA members have been relatively successful in responding to the assault. But one of our members, DollarSmart Money Centers, LLC, whose CEO Mark McDonald submitted an affidavit in 2014 in support of our response to the first-round of motions to dismiss, unfortunately was forced out of business when it lost banking services entirely in late

2014. If Operation Choke Point is not enjoined, I firmly believe some CFSA members will be forced to curtail their operations dramatically and others will have to shut down all together.

8. CFSA members thus have had to continue incurring substantial costs of doing business in a hostile environment. These costs range from the time and labor associated with transferring an account relationship from one bank to another to the expenses associated with becoming cash-intensive businesses, including increased reliance on armored cars and the security costs associated with physically storing the capital needed to conduct businesses.

9. As I stated in my first declaration, I have never seen regulatory abuse comparable to Operation Choke Point, nor have I seen such fear of the government felt by legitimate and law-abiding American business people. Sadly, I must report that the situation, far from improving, has only grown worse.

I declare under penalty of perjury, that the foregoing is true and correct.



Dennis Shaul

November 23, 2016